IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Regular Second Appeal No.258 of 1995

Date of decision: 29.05.2007

Smt. Sushil Sahni **Appellant**

Versus

State of H.P and another. **Respondents**

Coram

The Hon'ble Mr. Justice Surjit Singh, J.

Whether approved for reporting ?[1]

For the appellant: **Mr. Ajay Kumar, Advocate.**

For the Respondents: **Mr. Ashok Chaudhary, Additional Advocate General.**

Surjit Singh, J (oral)

Heard and gone through the record.

Appellant-plaintiff filed a suit for declaration that she is owner in possession of a plot measuring 30 feet x 40 feet, bearing No.6, Block No.5, situated in Saproon Mandi, Solan, as the said plot had been purchased by her from its previous owner Mohan Devi wife of late Shri Atma Ram and that the order of resumption of this plot, dated 19.5.1981, Ext.P-3, passed by the Administrator (Deputy Commissioner), New Mandi Township, Saproon, Solan, was illegal, void and of no consequence on her rights. It was stated that Saproon was initially a part of erstwhile State of Patiala. Further, it was stated that in the year 1940, the plot in question had been acquired by late Shri Atma Ram at a public auction conducted by a functionary of the erstwhile State of Patiala and a sale certificate (copy Ext. P-1) was issued in his favour on 31.5.1997 (BK). It was further

---

[1] ***Whether the reporters of Local Papers may be allowed to see the judgement*?**

stated that on the death of said Atma Ram, his wife Mohan Devi, became the owner of the plot and she sold this plot to the appellant-plaintiff. It was alleged that on 19.5.1981, the Administrator (Deputy Commissioner), New Mandi Township, Saproon, District Solan, passed an order against Atma Ram/Mohan Devi resuming the plot on the ground that they had not raised the building upon the plot in terms of condition No.5 of the auction and, therefore, plot was liable to resumption under Section 14 of the Himachal Pradesh New Mandi Township (Development and Regulation) Act, 1973. Appellant-plaintiff feeling aggrieved by this order, which was passed behind her back, filed a suit seeking the aforesaid declaration.

Respondents-defendants contested the suit. They alleged that the suit was not maintainable, the Court did not have jurisdiction and the plaint was liable to be rejected on account of non-service of notice under Section 80 CPC. On merits, it was stated that Mohan Devi had never been in possession of the plot nor had she obtained any permission from the department, as per record, to dispose of the plot and hence, the plaintiff could not claim herself to be the title holder.

Various issues were framed by the trial Court based on the pleadings of the parties. Ultimately, it was held that the plaintiff was the owner in possession of the suit property and the order passed by the Administrator (Ext.P-3), was illegal and void. The other issues, based on preliminary objections, were decided against the defendants. Consequently, the suit was decreed.

Respondents-defendants appealed against the decree of the trial Court. The first appellate Court (the District Judge) accepted the appeal. It affirmed the finding that the order of the resumption passed by the Administrator, Ext.P-3, was illegal and void, but accepted the appeal with the finding that the plaintiff had failed to prove that she had purchased

the property from Mohan Devi because she had produced only a photostat copy of the sale deed and tendered the same in evidence while appearing as her witness without proving the same, as per requirement of law. Appellant then came in appeal to this Court. Appeal was admitted on the following substantial questions of law:-

> "1. In case, the provisions of the H.P. New Mandi Townships (Development and Regulation) Act, 1973 were not applicable to the suit property, could the defendants resume the said property?
>
> 2. What is the effect of findings on issue No.1 and 3 by the learned District Judge, Solan, when it has been held while deciding issue No.2 that the order of resumption dated 19.5.1981 is wrong and unsustainable?"

I have heard the learned counsel for the parties and gone through the record. It has been held by the first appellate Court that the Himachal Pradesh New Mandi Township (Development and Regulation) Act, 1973, is not applicable to the suit property because the suit property had been acquired at a public auction from the ruler of erstwhile State of Patiala in the year 1940 or say long before the coming into force of the aforesaid Act. This finding is based upon a Division Bench judgment of this Court delivered on 4.9.1984 in CWP No. 303 of 1984, titled Pritam Singh vs. State of H.P. and another. There is no dispute between the parties with respect to this finding. Otherwise also, the finding is based upon the ratio of a Division Bench judgment of this Court rendered in the aforesaid case on 4.9.1984.

Now, the question is, when the first appellate Court held that the order of resumption was bad, how could the defendants lay any claim to the suit property. It is here that the first appellate Court appears to have

fallen in error. When the suit property had been acquired at a public auction from the erstwhile State of Patiala, the defendants, who are successors of the erstwhile State of Patiala, cannot lay claim or title to the suit property nor can they resume it under the provisions of New Mandi Township (Development and Regulation) Act, 1973, as observed hereinabove and as found by the two Courts below also.

Once it is held that the respondents-defendants have nothing to do with the suit property, they through their predecessor, i.e. the erstwhile State of Patiala having passed on the title to late Shri Atma Ram for consideration at a public auction, the appellant-plaintiff, in my considered view, could not have been denied the declaration asked for by her by taking a hyper technical view of the matter that the sale deed executed in her favour by late Smt. Mohan Devi, the successor of late Shri Atma Ram, was not proved as per provisions of law. The first appellate Court has held that the original sale deed has not been produced and only a photostat copy has been produced and tendered in evidence in a mechanical manner. Plaintiff appeared as PW-1. She stated that she had purchased the suit property from Smt. Mohan Devi vide sale deed, copy Ext.P-2. No objection was raised qua this part of her statement or the tendering of the copy of the sale deed when she was in the witness box. Not only this, her statement to the effect that she had purchased the suit property, was not subjected to cross-examination. Even in the written statement, defendants did not deny specifically the categorical plea taken by the appellant-plaintiff in paragraph 2 of the plaint that she had purchased the suit property from Mohan Devi. In fact, what the respondents-defendants stated in reply to paragraph 2 of the plaint, is that Smt. Mohan Devi had not sought the permission from the Government under the Rules. Perhaps the defendants were referring to the Rules

framed under the aforesaid Act of 1973. Now, when the Act itself is not applicable, as observed hereinabove, where was the need for obtaining any permission in accordance with the rules framed under the said Act.

In view of the above stated position, both the substantial questions of law on which the appeal was admitted, are answered in favour of the appellant-plaintiff. Consequently, the appeal is accepted and the judgment and the decree of the first appellate Court are set aside while those of the trial Court are restored and affirmed.

May 29, 2007 **(Surjit Singh)**
(ss) **Judge**